



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 3, 2003

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco - Legal Services  
P.O. Box 2570  
Waco, Texas 76701-2570

OR2003-4592

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183788.

The Waco Police Department (the "department") received a request for information concerning a particular automobile accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a "Texas Peace Officer's Accident Report." Section 550.065(b) of the Transportation Code states that it "applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]" This section states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.*

In the situation at hand, the request shows that the requestor has provided the department with all three pieces of information. You claim that this report is excepted from disclosure under sections 552.108. We note, however, that section 550.065 of the Transportation Code specifically addresses the public availability of the type of accident report submitted. Where

information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Therefore, the submitted "Texas Peace Officer's Accident Report" must be released to this requestor. *See* Open Records Decision No. 525 (1989) (stating that exceptions to disclosure under predecessor of Public Information Act do not, as general rule, apply to information made public by other statutes).

We next address the department's obligations under section 552.301 of the Government Code. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Whether a submission is timely is determined by section 552.308, which provides in part:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

- (1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period.

Act of April 25, 2003, 78th Leg., R.S., S.B. 1388, § 2 (to be codified at Gov't Code § 552.308(a)); *see also* Act of May 28, 2003, 78th Leg., R.S., S.B. 1388, § 3 (providing for immediate effectiveness of bill on receipt of vote of two-thirds majority of all members elected to each house).

In this instance, you state that the request was received on April 11, 2003. Ten business days following that date was April 25, 2003. You do not allege that the department was closed for any of the business days between April 11 and April 25. Although your letter is dated April 25, it bears a post office cancellation mark of April 28, and you have not otherwise furnished satisfactory proof that your submission was deposited in the mail on or before April 25. Under these circumstances, we conclude that the department did not meet the elements of timeliness established by section 552.308. Accordingly, the department failed to request this ruling within the ten-day deadline mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In this instance, you assert that the submitted information is excepted from disclosure under section 552.108. Section 552.108 is a discretionary exception and, under the present circumstances, does not provide a compelling reason to overcome the presumption that the information at issue is public. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions are intended to protect only interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties); *cf.* Open Records Decision 586 (1991) (deciding that need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under predecessor to section 552.108). Thus none of the submitted information may be withheld on the basis of this exception. Furthermore, we have reviewed the remaining submitted documents and find that they contain no information that is otherwise confidential with respect to this requestor. Thus, the remaining submitted information must be released to this requestor.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>1</sup>We note that the remaining documents include information that would ordinarily be withheld under laws and exceptions intended to protect the requestor's client's privacy interests. However, as the representative of the subject of such information, the requestor has a special right of access to it. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

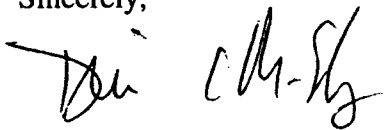
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Den C. McElroy", is written over the typed name.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/sdk

Ref: ID# 183788

Enc. Submitted documents

c: Mr. Robert W. Cotner  
Zimmerman, Zimmerman, Cotner & Young, P.C.  
P.O. Box 88  
Waco, Texas 76703  
(w/o enclosures)